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Opening Remarks by Commissioner Carol McDonald at the Prevention Forum

Speaking notes for

Carol McDonald
Commissioner
Canadian Human Rights Commission

Prevention Forum

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Ladies and gentlemen,
I'm very pleased to be here with you today at this Prevention Forum. Before we get started, I would like to thank the Canada School of Public Service for its invaluable help in organizing this event.

Second, of course, I would like to thank all of you for coming. This is just the second time the Commission has held such an event with employers and service providers, our first being last February. And I'm pleased to say that we are building on the success of that first effort. This time around we have even more participants, and a greater number of employers being represented.

We have a broad range of experience in the room, and I look forward to some interesting exchanges. I think we can learn a lot from each other.

Many of your organizations have signed memoranda of understanding with the Commission to work together to prevent

discrimination and resolve complaints more effectively and quickly. These MOUs are part of the Prevention program the Commission put in place two years ago, with a view to putting more of our efforts into preventing discrimination, stemming the source of human rights complaints.

Some other organizations here today don't have an MOU with the Commission, but had expressed an interest in knowing more about the Commission's recent activities, including improvements to the complaint process and our Prevention program. We're glad you could join us today.

One of the things we have been hearing from employers is the need for solutions to deal with accommodation issues. We heard this at the two-day conference we held last February, and we have been hearing it since. So that will be the focus of the next two days: meeting the challenges associated with disability and accommodation.

According to the 2001 Census, 16 percent of Canadians between 15 and 64 have a disability. Another sobering fact: disability increases as we age – and our population is aging. In workplaces requiring physically demanding work, we are hearing that sometimes there are not enough "light duties" to go around. Some employers tell us they have reached the saturation point in terms of accommodation because such a large proportion of employees are making such requests. Managing accommodation requests, in the context of an expanding meaning of disability, is increasingly difficult.

Accommodation is a challenge. We don't have all the answers. But we are committed to working together with you to find ways to both respect human rights and the employer's need to get the job done.

Here's what we see at the Commission. Among the human rights complaints we receive, disability is consistently the most common ground of discrimination. In 2005, a full 50 percent of all signed complaints dealt with discrimination based on disability. From 2002 to 2004, the proportion of complaints citing disability hovered around 40 percent.

The vast majority of these complaints are employment related. In 2004, about half of these complaints related to mental health or back problems. Among the allegations made in disability complaints, the most frequently cited is refusal to accommodate, followed by differential treatment and termination of employment. That's a snapshot from the perspective of complaints.

Our employment equity work at the Commission gives us insight into disability in the workplace from another perspective.

Among the designated groups protected under the *Employment Equity Act*, persons with disabilities fare the worst. In the private sector, their representation in 2004 stood at 2.5 percent, a slight improvement from 2.3 percent, where it stood for a number of years. Persons with disabilities received only 1.1 percent of all hires, substantially short of the 5.3 percent benchmark.

Still, some improvements were noted. In the banking sector, where their representation had been lower than in other sectors, persons with disabilities held 2.8 percent of jobs in 2004, up from 2.2 percent in 2003 and 2.4 percent in 1997. Their share of hires increased from 1.2 percent in 1997 to 1.7 percent in 2004. This was higher than in other sectors, but considerably lower than availability.

In comparison, the representation of persons with disabilities in the public sector has increased annually, going from 3.9 percent in 1997 to 5.8 percent in 2004. But they continue to receive only 3.1 percent of all hires in the public sector, indicating that the increased representation may be mainly due to increased self-identification rather than hires.

Clearly, many barriers still exist which prevent persons with disabilities from gaining full access to employment, and hence full participation in Canadian society.

So, what can be done to improve the situation? How do we ensure that workplaces are productive and safe? How do we ensure people's needs are appropriately accommodated? How do we ensure that people with disabilities have equal opportunities to participate in Canadian society?

I would like to tell you about some of the approaches the Commission has taken related to disability. This work is being done in various areas across the Commission – in the way complaints are investigated, in our prevention work with employers, in our research and proactive work, and in litigation.

About three years ago, the Commission created multi-disciplinary teams to examine complaints of discrimination and suggest the best way to handle each of them. One of these teams focuses on disability complaints. Team members bring expertise in different areas, such as investigation, legal or policy, and together they decide on the course of action that is most likely to resolve the complaint. The result for us is greater consistency and facility in working toward resolution.

One of the interesting things our team has found about disability complaints is that a lot of them stem from misunderstandings. The employee and employer haven't communicated very well. In some cases, for example, complainants are not aware of their responsibility to ask for accommodation and have not, in fact, disclosed their disability. In other cases, complainants are seeking inappropriate accommodation. They are under the impression that they can dictate what the accommodation will be.

We see, therefore, great opportunities for education about accommodation: What it is, and what it isn't. Clarification of the role of the employee and the role of the employer. Understanding that properly assessing a disability and determining appropriate accommodation requires cooperation between both parties.

Our recently established **Prevention** group has the lead on raising awareness. Part of the Commission's role is to work with employers to explore options for accommodation, and to ensure that rules, policies and practices are created with accommodation in mind. Staff in Ottawa and in our regional offices have provided numerous training sessions to employers and unions on the duty to accommodate.

The Prevention team has created an Employer Advisory Council. Beginning this past April, representatives from the Commission and MOU organizations now meet quarterly to share best practices and training tools, to exchange ideas and to discuss areas of concern. This group is pooling the knowledge of its members to create a database of best practices, as well as an inventory of available training tools.

The Employer Advisory Council has also created a sub-committee on accommodation issues which meets every two weeks to address employer concerns in this key area. The sub-committee began with representatives from Canada Post, Canada Border Services Agency, the RCMP and the Commission, and they have since been joined by representatives from WestJet and Canadian Pacific Railway.

The Commission's Knowledge Centre has also been busy. We are in the planning stages of a conference on the barrier removal approach to improving inclusion and access for persons with disabilities. When we say barriers, of course, we mean not simply physical barriers, but also policies, practices and operating cultures that discourage or prevent persons with disabilities from integrating into the workforce and society. The conference is being planned for February or March 2007.

The Knowledge Centre has also been publishing some interesting research and reports.

Two weeks ago, the Commission posted on its Web site a research study entitled *Human Rights and the Return to Work: The State of the Issue*. Charles Théroux, from the Commission's Knowledge Centre, will be speaking about it later today. As a follow-up to the study, we are now in the process of developing guidelines for managers on managing prolonged employee absences and the return to work. In fact, we will be consulting with the sub-committee on accommodation issues on this project. The idea is to provide managers with a user-friendly document that sets out what their responsibilities are in terms of the law and provides examples of real cases. One of the goals is to clarify roles and responsibilities of all parties: employee, employer and union.

Last year, the Commission released a report called *No Answer*, which looked at how the government is doing in accommodating the needs of Canadians who, as a result of a disability, cannot use the regular telephone system. We found that there is only a 50-50 chance that persons with disabilities will find a number listed for a TTY, and when a TTY

is listed, there is only a one-in-three chance that they will be able to complete a call successfully. We made a number of specific recommendations to rectify the situation, including the adoption of new technologies such as voice-over-internet that could make telephone communication more accessible for many people with disabilities.

We will soon be publishing a follow-up report, *No Answer II*, that looks at how federally regulated organizations are doing in providing communication access for people who are deaf, deafened or hard of hearing.

Another soon-to-be-released report looks at the availability of government publications in alternative formats for people who are blind or visually impaired. The Commission will work with Treasury Board to follow-up on the study's recommendations, to ensure that all Canadians have equal access to the Government's printed publications.

On the international scene, I was pleased to represent the Commission at United Nations headquarters this past August, where I had the opportunity to participate on the committee that approved a *Draft Convention on the Rights of Persons with Disabilities*. The draft convention will likely be submitted for approval by the UN General Assembly in fall 2007.

While at the UN, I also had the pleasure of introducing a report we commissioned, called *International Best Practices in Universal Design: A Global Review*. On a very practical level, this report provides architects and designers with the tools and options to design buildings that are accessible to all users. You will have a chance to hear much more about it tomorrow from Betty Dion, whose firm undertook the research and writing of the report.

In the area of litigation, the Commission has been involved in various accessibility cases. We are currently awaiting a Supreme Court decision that is expected to provide guidance on the extent of the legal obligation to accommodate, in particular what standard the Canadian Transportation Agency should apply with regard to an "undue obstacle."

All this to say that a lot of exciting work is being done in the area of accessibility and accommodation. But I will stop there.

Accommodating disabilities represents a great opportunity and a great challenge. But I believe it is a challenge that the people in this room are committed to taking on. As fair-minded people, we want to put into practice the words of section 2 of the *Canadian Human Rights Act*:

> *"to give effect ... to the principle that all individuals should have an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated, consistent with their duties and obligations as members of society, without being hindered in or prevented from doing so by discriminatory practices"*

The Canadian Human Rights Commission is just one link in the human rights chain. We don't have the final word. We look forward to exploring solutions to our common challenges together with you.

Thank you.

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